United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

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Court of Appeals, District of Columbia

JANUARY TERM, 1901.

No. 1050.

65

W. MOSBY WILLIAMS, APPELLANT,

vs.

THE DISTRICT TITLE INSURANCE COMPANY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED FEBRUARY 11, 1901.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

W. Mosby Williams, Appellant,
vs.
The District Title Insurance Co. } No. 1050.

a Supreme Court of the District of Columbia.

W. Mosby Williams
vs.
The District Title Insurance Company. } No. 21843. In Equity.

United States of America,
District of Columbia, } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill for Receiver, &c.*

Filed November 1, 1900.

In the Supreme Court of the District of Columbia.

W. Mosby Williams
vs.
The District Title Insurance Company. } In Equity. No. 21843.

Complainant states as follows:

1. He is a citizen of the United States, a resident of the District of Columbia, and sues in his own right, as well for himself as for all other stockholders of the said defendant who may intervene herein and contribute to the costs of this cause.

2. The defendant is a corporation created under laws in force in the District of Columbia for the purpose of carrying on the business of examination and insurance of titles to real estate in said District.

3. Said defendant has a capital of one hundred and fifty thousand dollars, represented by seventy-five hundred shares of twenty dollars, per value, each. All said shares have been issued. Whether they were paid for in full complainant does not know and calls upon the defendant to discover.

4. Ever since its organization the defendant company has been

operated at a loss, for although during some few months the
2 receipts were equal to the expenses, the usual result has been
a deficit at the end of each month. The expense, salary, and interest charge is now about $750 per month.

5. The capital stock, so far as it now exists, has been greatly impaired; it consists of the plant of the company, consisting of transcripts of real-estate records, records of title examinations, and certain books and office furniture, and the following-described real estate in the city of Washington, District of Columbia, to wit:

The north one-half of original lot twenty-five, in square numbered two hundred and fifty-three, subject to trust securing the sum of thirty-five thousand dollars, and some book accounts.

The value of the total assets of the company is far below the par value of the stock. In fact they are not worth over twenty per cent. of the stock at this time.

5½. Complainant has just learned that the defendant is about to discontinue its service at the record office, whereby a record is made of the current daily transactions in the office of the recorder of deeds and in the clerk's office of the supreme court of the District of Columbia, which record is absolutely essential to the conduct of the defendant's business, especially to compete for business with the four other title companies located in said District.

6. Complainant has also just learned that it is the purpose of the
officers of the company to endeavor to acquire the stock of
3 the minority of stockholders at a nominal price by threats
of the action hereinafter referred to and with the avowed purpose, if such stock cannot be thus acquired, to force a sale of the assets of the company, buy them as cheaply as possible, and then enter into any form of insurance, surety, and guaranty business with which the public can be induced to trust it, and this without regard to the charter powers of the defendant as at present constituted.

7. Complainant is advised, and so avers, that this proposed sale of assets and departure from charter rights of obligations will be greatly injurious to all the stockholders in said company, as the assets will yield very little under such circumstances, and there is grave danger that by such disregard of charter obligations serious pecuniary liability may be imposed upon the stockholders.

8. Complainant is the owner of five shares of stock of said company of the par value of one hundred dollars. There are many other stockholders in said company, as he is informed and believes, who object, as he does, to any forced sale of the assets or to any departure from the authorized business of the company. Complainant paid full value—$100—in money for said stock in June, 1892.

9. It is perfectly apparent that it is worse than useless for the company to continue in business losing money practically every day. There is no prospect of improvement, and the obvious and only proper course to be pursued is to convert the assets into cash under
the most favorable auspices and divide the proceeds among
4 the stockholders. The longer the present state of affairs continues the greater will be the stockholders' loss.

10. Complainant further avers that the board of directors of the company is dominated by the owners of the majority of the stock, which said owners have caused to be transferred to the name of the Realty Appraisal and Agency Company, which it is claimed is a Delaware corporation, with a greater elasticity of charter and a more intangible stockholder's liability than is characteristic of even the celebrated New Jersey corporations, and complainant is informed and believes that it is intended by the majority stockholders to utilize this corporate prodigy in the contemplated operation of "freezing out" the minority stockholders with neatness and despatch.

11. Complainant is advised that this court sitting in equity will not permit this to be done, but will by appropriate measures see to it that the trust fund in the hands of the defendant shall be duly administered for the equal benefit of all the stockholders.

Complainant therefore prays:

1. That a receiver or receivers may be at once appointed to take possession and control of the assets of said defendant and to preserve, protect, and dispose of them under the direction of the court.

2. That the affairs of said corporation may be wound up, its existence terminated, and its assets converted into money and divided among all the stockholders according to their holdings of stock.

3. That the defendant may be enjoined from entering into business not contemplated by its charter, either directly or through the said alleged Delaware corporation.

4. That complainant may have such other and further relief as the nature of his case may require.

To which end complainant prays for process of subpœna against the defendant, The District Title Insurance Company, requiring it to appear and answer the exigency of this bill, but not under oath, which is waived.

W. MOSBY WILLIAMS.

JNO. RIDOUT,
Sol'r for Compl't.

I do solemnly swear that I have read the foregoing bill by me subscribed and know the contents thereof; that the facts therein stated as of my personal knowledge are true and those therein stated upon information and belief I believe to be true.

W. MOSBY WILLIAMS.

Subscribed and sworn to before me this 1st day of November, A. D. 1900.

CHARLES S. BUNDY,
[SEAL.] *Notary Public, D. C.*

Memorandum.

Spa. to answer issued November 1, 1900; returned December 4, 1900, "Not served because marshal's fees not paid."

Answer.

Filed November 8, 1900.

In the Supreme Court of the District of Columbia.

W. MOSBY WILLIAMS
vs.
THE DISTRICT TITLE INSURANCE COMPANY. } No. 21843. In Equity.

For answer unto said bill this defendant states and avers as follows:

1 & 2. Answering paragraphs 1 and 2 of the bill of complaint, this defendant admits the citizenship and residence of the plaintiff, as alleged, and that the defendant is a corporation, as alleged.

3. Answering paragraph 3 of said bill, this defendant says that the capital stock is therein set out correctly, and that the same has been fully paid.

4. Answering paragraph 4 of said bill, this defendant denies the matters and things therein set out as alleged and says it is not true that "ever since its organization the defendant company has been operated at a loss." Shortly prior to December, 1899, up to
7 which time the company had been operated at a loss, in order to prevent such loss and to put the company on a paying basis, if possible, the board of directors made a change in the officers, which resulted in an immediate large reduction of monthly expenses and a gradual increase of business, so that under the new management the company has been operated at a profit.

5. Answering paragraph 5, this defendant denies absolutely that the capital stock, as it now exists, has been greatly impaired; on the contrary, it is today, so far as the actual value of its plant and other assets are concerned, as shown by actual cost upon its books, in better condition than it has been for several years, and its statement at the close of business on October 31st, 1900, shows a surplus over every liability known, including capital stock, of several thousand dollars. It denies that the total value of the assets of the company (considered as assets of a title insurance company) is below the par value of the stock.

5½. This defendant, while it cannot answer as to what complainant may have learned, absolutely denies the truth of what in this paragraph of the bill he states he has learned.

6. Answering paragraph 6, in which the complainant says that he has just learned that it is the purpose of the officers to endeavor to acquire the stock of the minority stockholders by threats, in said paragraph set out, of forcing the sale of the assets and buying them as cheaply as possible and then entering into any form of insurance,
surety, and guarantee business, without regard to the charter
8 powers of the defendant as at present constituted, this defendant says that if complainant has learned anything of the

kind his informant has not the shadow of fact to base such information on, and this defendant absolutely denies any such purpose, or the discussion or even mention of anything that could be construed into any such purpose. As a matter of fact, no officer holds more stock today than when he assumed such office.

7. Answering paragraph 7, this defendant again denies that any such sale of assets and departure from charter rights and obligations as alleged is proposed or contemplated, and avers that complainant's apprehensions of the result of such action are wholly without any basis of truth or fact.

8. Answering paragraph 8, this defendant admits that the complainant is the record owner of five shares of stock of the par value of one hundred dollars, but is credibly informed and believes that he does not hold the certificate for the same, and that said certificate has been pledged by complainant for more than the same will sell for.

9. Answering paragraph 9, this defendant denies the state of facts on which the opinion and argument of the complainant is based as existing, and deems no further answer necessary.

10. This defendant denies that the allegations in paragraph 10 are true, and says that no business relation as set out in said bill is now or ever has been contemplated by either this corporation or the officers or directors thereof. As a matter of fact, five of the directors of this company have no interest whatever in the said Realty Appraisal and Agency Company, and the total united holdings of a majority of the directors of the title company in the appraisal company is only ten shares of the par value of twenty dollars each—in all, two hundred dollars.

9

Further answering said bill, this defendant says that since the change of its officers heretofore referred to the affairs of the company have been conducted economically and are now being conducted profitably. Its board of directors is actuated by a desire to promote its efficiency and increase its business, and its prospects for doing a largely increased and profitable business are very encouraging, except so far as the same has been and may be injuriously affected by the filing of the bill of complaint in this cause.

And this defendant believes that said bill was not filed in good faith or with the slightest expectation of obtaining a decree in accordance with the prayers of the bill, but was filed for the purpose of forcing this defendant to pay an extravagant price for said five shares of stock; and in this connection it shows unto the court that complainant has not caused process to be served on this defendant, and that the complainant, W. Mosby Williams, came to the office of the company, stated to the president of the company that he had a bill prepared to dissolve the company and asking that a receiver be appointed; that it was already sworn to by himself and signed by John Ridout, as counsel, and that before filing it he had concluded to offer his stock to him, the said president, for one hundred dollars, the amount that he paid for it in 1892, and fifty dollars more, which would be about the amount of interest, and a counsel fee, the

amount of which was not stated, and upon the refusal of the
10 president to comply with this extortionate demand said bill was filed.

And, having answered said bill fully, it prays that it may have the same advantage as if it demurred to said bill, and that it may be hence dismissed with costs.

THE DISTRICT TITLE INSURANCE CO.,
By W. J. NEWTON, *President.*

[CORPORATE SEAL.]

WM. F. MATTINGLY,
JOHN B. LARNER,
Att'ys for Def't.

DISTRICT OF COLUMBIA, *To wit:*

I, Watson J. Newton, do solemnly swear that I am the president of the above-named defendant, The District Title Insurance Company, and have been such since December 1st, 1899; that I have read the foregoing answer by me subscribed as such president and know the contents thereof; that the facts therein stated as of personal knowledge are true, and those stated upon information and belief I believe to be true.

W. J. NEWTON.

Subscribed and sworn to before me this 8th day of November, A. D. 1900.

EMMA M. GILLETT,
Notary Public.

[SEAL.]

11 *Replication.*

Filed November 16, 1900.

In the Supreme Court of the District of Columbia.

W. MOSBY WILLIAMS
vs.
THE DISTRICT TITLE INSURANCE COMPANY. } In Equity. No. 21843.

The complainant joins issue with the defendant.

JOHN RIDOUT,
Attorney for Complainant.

Motion for Hearing in Open Court.

Filed November 19, 1900.

In the Supreme Court of the District of Columbia.

W. MOSBY WILLIAMS
vs.
THE DISTRICT TITLE INSURANCE COMPANY. } No. 21843. In Equity.

Now comes the defendant, by its solicitors, William F. Mattingly and John B. Larner, and moves the court to speed this cause by an immediate hearing thereof upon testimony to be taken in open court for the reason—

That the filing of the bill and the prayers therein for the dissolution of the defendant company and the appointment of a
12 receiver thereof has worked and is working an irreparable injury to the business of the company, which injury is increasing with each day's delay, and in support hereof the defendant files certain affidavits, which, together with its answer filed in this cause, are prayed to be taken as part hereof.

WM. F. MATTINGLY,
JOHN B. LARNER,
Solicitors for Defendant.

Order Setting Cause for Hearing, &c.

Filed November 22, 1900.

In the Supreme Court of the District of Columbia.

W. MOSBY WILLIAMS
vs.
DISTRICT TITLE INS. CO. } Equity. 21843.

The motion filed herein by the defendant for a hearing upon testimony to be taken in open court came on to be heard, and, the plaintiff consenting thereto in open court, it is, this 22nd day of November, 1900, ordered that such hearing be had on Monday, the third day of December, 1900.

JOB BARNARD, *Justice.*

13 *Testimony on Behalf of Complainant.*

Filed December 6, 1900.

In the Supreme Court of the District of Columbia.

W. MOSBY WILLIAMS
vs.
THE DISTRICT TITLE INSURANCE CO. } Equity. No. 21843.

Testimony on behalf of complainant, taken in open court, before Judge Barnard, in equity court room No. 2, on Monday, December 3rd, 1900, at 10 o'clock a. m.

Present: Mr. William F. Mattingly and Mr. John B. Larner, on behalf of defendant, and Mr. John Ridout, on behalf of complainant.

Mr. RIDOUT: I served notice for the production of the list of stockholders and I would like it to be produced.

Mr. MATTINGLY: You cannot see it yet.

(After argument.)

The COURT: You will have to proceed with the evidence.

Mr. RIDOUT: We want the production of the book of stockholders, and outside of that we are ready to proceed with the case.

Whereupon W. MOSBY WILLIAMS, the complainant herein, was produced as a witness in his own behalf and who, having been first duly sworn, testified as follows:

Direct examination.

By Mr. RIDOUT:

Q. You are the complainant in this case?

A. Yes.

14 Q. Look at the paper I hand you, which purports to be certificate No. 57 for five shares of the capital stock of the District Title Insurance Company, and state what it is and how you obtained it.

A. This is a certificate of stock of the District Title Insurance Company for five shares in my name.

Q. What is the date?

A. It is dated the 28th day of June, 1892, and my recollection is that pursuant to a notice sent me from Mr. William F. Mattingly I called at the office of the American Security and Trust Company, and upon payment of $100, the par value, the stock was delivered to me.

Q. Then you received your certificate?

A. I received the certificate at the time.

Mr. RIDOUT: I offer the certificate in evidence.

Q. Mr. Williams, state, if you please, what attracted your atten-

tion to the condition of this company within a recent period that ed you to take steps to ascertain its condition.

A. Something like a week or ten days prior to the latter part of October Mr. Charles W. Handy met me on the street and told me there was some movement on hand——

Mr. MATTINGLY: I object, your honor.

The COURT: What he said would not be competent.

Mr. RIDOUT: That is only preliminary. The next sentence will show that.

The WITNESS (continuing): That some movement was on foot in the District Title Insurance Company; that he was not conversant with the details——

Mr. MATTINGLY: Is the witness to go on and relate his interview?

The COURT: What Mr. Handy told him would not be
15 competent evidence. You say he called your attention to the matter?

Mr. RIDOUT: He can show that Mr. Handy came to him and was the representative or for-runner of Mr. Newton.

The WITNESS (continuing): I was going to get to it. He told me that Mr. Newton in a day or two would call on me and explain the details of the situation. And several days or a week after that, which was the latter part of October, Mr. W. J. Newton called at my office in the Columbian building and conversed with me in reference to the affairs of the company—he conversed with me as a stockholder of the title company, and he talked the affairs of the company, I suppose, nearly an hour—quite a long while in my private room. As a result of that conversation I filed this suit.

Q. What did he state was the plan contemplated?

A. He said to me that the company was losing money, and that it had been continuously losing money; that with a view of changing its affairs about the latter part of 1899 there had been a change in the management of affairs, and that as a result the expenditures on account of interest and salary and things of that kind charged against the company had been materially reduced, probably one-half a month; that they were then about seven hundred and fifty dollars per month; that during most of the months from that time up to the time of this conversation the expenditures had exceeded the receipts; during two or three months, if I remember correctly, the receipts had exceeded the expenditures, and that they were not getting the business that was contemplated; that there was not the co-operation that

it was hoped there would be, especially among the officers
16 and stockholders of the company, and that it was proposed, in order to secure the confidence of the people and in order to get business, to create a capital stock in reality, and it was proposed that each stockholder should contribute the sum of $13.66 a share, or two-thirds of twenty dollars, as part of the stock, and create a fund of $100,000, which would be substantial and upon which business could be obtained; that he wanted me as a stockholder to agree to

come in on that basis. I asked Mr. Newton in what way was he going to make it pay, assuming that he got in $100,000 in money, and I called his attention to my belief that there was not a field for the number of title companies, and he said it was proposed to do other business and enlarge the scope of the business, and among other things he said, I think, that the charter was not broad enough; it could be amended; that the company could take over, for example, the business of the appraisal company, or had some connection, that they had offices in the same building, and that they would do a different class of business—a casualty and indemnity, a guarantee business. I substantially said to him that if it was to go into a new line of business I did not wish to contribute and keep up the title business; that I did not wish to do it. He said, Then you can sell out and we will buy your stock, and said he would give me $3.50 a share. I said, This stock cost me $20 in 1892; and he said, That is about all it is worth and that is all we will give; and I said, Then, what would be the result if he did not get a contribution from all the stockholders, if they did not buy all the stock? And he said that if they did not co-operate and he could not get them all in there is nothing else to do than for the company to close up.
17 That would simply mean the company would be wound up and whatever assets the company had would be distributed. He said, I suppose the books and records, &c., would bring, maybe, five to seven thousand dollars and the equity in the real estate, I reckon, is worth $10,000. He said, Of course, we would have to go into court and have a receiver, and everything would be sold out; and, he said, we will not lose anything; we have a control of the stock and we will be there and we will bid on the plant; we are not going to lose anything.

Q. In that connection did he give you any figures of what had been the results of the various months?

A. He stated to me in round numbers the figures and the results of the affairs of the company from the time he came into the management up to that time.

Q. By the way, did he say when he took it in charge?

A. He said it was about the 1st of December, 1899. I don't know whether it was the last part of November or the early part of December, but it was about that time.

Q. Can you recall what he said as to the approximate results of the business?

A. Well, I cannot recall to memory, I don't think, as accurately as I could from a memorandum which I made at the time Mr. Newton was in my office.

Q. In his presence?

A. Yes; in his presence. I had on my desk a package of old business cards—that is, business cards that had the number of my old office, on F street, that I was using for memoranda purposes, and one of those cards I had in my hand and made a memorandum on it at that time.

Q. Is this the paper?

18 A. This card alone is the paper I made the memorandum on.

Q. I wish you would refresh your memory from that card and state what Mr. Newton told you.

A. He said that in May of this year the company had gained—that is, the receipts over the payments were about $550; that in June it gained $200; that in July the receipts and disbursements were about even; that from December of last year up to April of this year the loss was about equivalent to the gain in May and June of $750; that the loss in August of this year was about $350; that the loss in September was about $150; that the loss for October of this year would be about $350, unless within the remaining day or two of the month—this was about the 29th, maybe, or the 28th—unless within the remaining day or two they were able to complete a case which had been on hand for a number of months out of which they would get a large fee, approximately that would reduce the loss of that month $300; in other words, that if they got in and completed that case the loss would be about $50. If they did not the loss would be about $350 for October. He also stated as a result that there were seven thousand five hundred shares of stock, and that the par value was $20 and $150,000 was the capital.

The COURT: Is this stock at $20 par?

A. $20 par.

Q. Your stock then amounted to $100 par?

A. Yes.

By Mr. RIDOUT:

Q. Did Mr. Newton at that time make any statement concerning the relations proposed to be created between the title company

19 and the appraisal company? In that connection I will show you a circular issued to the stockholders of the District Title Insurance Company referring to an exchange of stock of the title company for appraisal company stock, and ask you if he made any allusion to that circular in that conversation.

A. He said that quite a considerable amount of the title company's stock had been exchanged for stock of this appraisal and agency company at $4 a share. He spoke of the appraisal and agency company in connection with the District Title Company's affairs, but not very explicitely or expressly. For example, he said, among other business that the title company might do after acquiring this additional stock that they might take over the business of the appraisal company, and he also said that we or I or us, first one and then the other, had investigated in reference to the agency of an insurance company, and that as a result he had purchased or given $1,000 for the agency of some company and had it moved up there, and that would be one of the paying features of the company when this new capital came in.

Q. Did he say what the name of that company was?

A. I cannot say whether he gave me the name or not. He told me through whose office or where the agency was purchased—from Hill, Newton & Company—but I cannot recall whether he gave me

the name or not. My recollection is he stated the business of the company to be an insurance company—a casualty assurance company.

Q. Referring to the circular there, when did you receive it and how?

A. This came to me in the mail in this year. I cannot recall the exact date, but I think some time in the early part of the year, probably the fore part of January.

Mr. RIDOUT: That is offered in evidence.

20 Q. I hand you a circular issued by the Title Insurance Company, dated March 5th, 1900, and signed "District Title Insurance Company, by W. J. Newton, president," and call your attention to the clause in it I have underlined, and ask you to state whether Newton made any mention about that statement. The clause to which I call the witness' attention is this: "All stockholders of the Realty Appraisal and Agency Company are practically stockholders of the District Title Insurance Company." My question is whether Mr. Newton alluded to that statement in any way during the conversation.

A. Mr. Newton substantially stated in connection with stating that stockholders of the District Title Insurance Company who had exchanged their stock for stock in the appraisal company, that they were substantially the stockholders in each of the companies. Whether he made that statement specifically referring to this clause of the letter I cannot say, because the circular was not there at that time.

Q. How did you receive that circular?

A. This circular came to me through the mail about the time of its date.

Mr. RIDOUT: That circular so far as it relates to the Realty Appraisal Company is offered in evidence.

Q. Mr. Williams, did you attend the meeting of the stockholders of the title company held in February, 1900?

A. Yes, sir; I did.

Q. What office, if any, did you hold at that meeting?

A. I don't know I held any office. I think Mr. Newton asked me to act as a teller.

21 Q. At that time can you recall anything which transpired in respect of the voting of stock by Mr. Newton—Mr. Newton voting stock which stood in his name for some other person?

A. My recollection is that there were two large blocks of stock, one in the name of Mr. Newton and also in the name of S. W. Woodard, as trustees, and the other block in the name of Mr. Newton and E. S. Parker, as trustees; that Mr. Newton and Mr. Parker were present, and as trustees of that block of stock voted that stock. In regard to the other block of stock in the name of Mr. Woodard and Mr. Newton, Mr. Woodard was not present, and I

asked in reference to the voting of that block of stock and was advised that Mr. Newton was present and would vote it. There was no authority from Mr. Woodard, who was absent, to vote the stock in so far as he was concerned as trustee.

Q. What were the propositions before the meeting at that time?

A. There were, as I recall, three substantial propositions. One was that the capital stock of the company be reduced from two hundred to one hundred and fifty thousand dollars, and we considered them in separate resolutions, but as an offshoot to that and for the purpose, substantially, of carrying out that and refunding the indebtedness of the company, the second resolution was to authorize the borrowing of $35,000 for that purpose and to secure that indebtedness on the building of the company, and the third resolution was—I cannot remember whether it was a resolution absolute or whether it was in the alternative, but the purport of it was that the building of the company should be sold, and there was quite
22 a discussion about the advisability of authorizing the building of the company to be sold by the board of directors without some proviso attached either as to limit as to what it should bring or providing that it should be in the alternative if this loan could not be floated or something of that kind. I am not very clear about that, but my recollection is that that resolution was either withdrawn or not carried. The other two, I think, were announced to be carried.

Q. At that meeting did or not any question arise concerning the voting of certain stock which was spoken of as treasury stock, or stock owned by the company?

A. My recollection is there was quite a controversy, to some extent heated, between Mr. Newton and Mr. Eugene Carusi over certain stock in the name of Eugene Carusi as trustee. Mr. Eugene Carusi——

Mr. MATTINGLY: I have allowed this to go on without objection. I don't see what possible effect it could have. The averment of the bill is, and admitted by the answer, that the capital stock of this company is $150,000. Now, as to what took place at the stockholders' meeting about which Mr. Williams is now testifying, I don't think can possibly have any bearing on this case. In fact I haven't been able to see the bearing of any of the testimony.

(After argument.)

The COURT: I was unable to see when you started in with the case how the court could take jurisdiction of this case, and I don't think it is waived by the answer coming in. You can answer, and if on the face of the bill and answer together the court has no jurisdiction it cannot act. The point can be raised at any time, and
23 I don't believe that under these pleadings that the court will have jurisdiction in this case at all at the present time. But if the case is to be argued further on that point, if Mr. Ridout wants to take time, I think we better take an adjournment.

Mr. RIDOUT: I understood Mr. Mattingly made another suggestion. Do you want to submit the case on the bill and on the testimony already in?

The COURT: I am very clearly of the opinion that the principle of this rule of the supreme court, if not the rule itself, is applicable. The closing paragraph would show this bill is entirely defective. There has been no meeting called of the trustees or of the shareholders and his grievance presented and no attempt to show anything of the kind.

Mr. RIDOUT: Here is the averment that the majority of the stock is dominated by the board.

The COURT: You can state that. I doubt if the court would then have the jurisdiction to appoint a receiver.

Mr. RIDOUT: If your honor thinks that way you can decide it, but I think I can bring authorities to show the jurisdiction. If not I wish your honor would sustain the demurrer and give us an option to say whether we will take it up as it is or amend. I shall tomorrow give your honor some authorities, and that, as I understand, it will be sustained, and we will decide, if it should be sustained, whether we will go up on the record as it is.

W. MOSBY WILLIAMS.

Whereupon an adjournment was taken to meet on Wednesday morning, December 5th, 1900, at 10 o'clock.

24 The foregoing testimony was taken in open court on trial of above-entitled cause.

JOB BARNARD, *Justice.*

December 6, 1900.

Decree Dismissing Bill.

Filed December 6, 1900.

In the Supreme Court of the District of Columbia.

W. MOSBY WILLIAMS
vs.
THE DISTRICT TITLE INSURANCE COMPANY. } No. 21843. Equity.

This cause came on to be heard pursuant to the order heretofore passed herein and pending the complainant's testimony; objection being made by counsel for defendant that the taking of further testimony would be wholly unnecessary, as the bill could not be maintained, and the question having been argued by counsel for the respective parties and duly considered by the court, it is, this 6th day of December, A. D. 1900, ordered, adjudged, and decreed that the bill of complaint in this cause be, and the same hereby is, dismissed, and that the complainant pay the costs herein, to be taxed by the clerk.

JOB BARNARD, *Justice.*

25 From the above decree the complainant in open court prays an appeal to the Court of Appeals, which is allowed, and the penalty of the bond for costs on appeal is fixed at $100.

JOB BARNARD, *Justice.*

Order Proposed by Complainant.

Filed December 6, 1900.

In the Supreme Court of the District of Columbia.

W. MOSBY WILLIAMS
vs.
THE DISTRICT TITLE INSURANCE COMPANY. } In Equity. No. 21843.

This cause came on to be heard pursuant to the order heretofore passed herein and pending the taking in open court of the complainant's testimony; objection being made by counsel for defendant that the taking of further testimony would be wholly unnecessary, as the bill could not be maintained, the complainant thereupon insisted that any such objection had been waived by defendant's application for hearing upon testimony, and complainant moved the court to strike out defendant's answer or the clause of demurrer contained therein, or to require the defendant to elect whether it would stand upon said answer as such or would treat it as a demurrer, and
26 said objection of the defendant and the objections and motions of the complainant having been argued by counsel for the respective parties and duly considered by the court, it is, this — day of December, 1900, adjudged and ordered that said objection and motions of the complainant be, and the same are hereby, overruled; that the demurrer contained in the answer of the defendant be, and the same is hereby, sustained, and that the complainant have leave (having requested the same) to amend his bill or to file a supplemental bill, as he may be advised, within — days from this day.

By the court:

——— ———,
Asso. Justice.

Refused.
JOB BARNARD, *Justice.*

Memorandum.

December 28, 1900.—Appeal bond filed.

27 *Order Authorizing Filing of Certified Copies of Exhibits.*

Filed January 10, 1901.

In the Supreme Court of the District of Columbia.

W. MOSBY WILLIAMS
vs.
THE DISTRICT TITLE INSURANCE COMPANY. } Equity. No. 21843.

It appearing to the court that the testimony of the complainant taken in open court has been reduced to writing and filed herein, and that the several writings referred to by the witness Williams and offered in evidence by complainant and designated as Complainant's Exhibits One, Two, and Three have not been filed herein, it is, this 10th day of January, 1901, on motion of complainant, by his solicitor, ordered that certified copies of said exhibits be made by the clerk and filed herein in lieu of the originals.

By the court:

JOB BARNARD, *Justice.*

28 COMPLAINANT'S EXHIBIT No. 1.

Filed January 11, 1901.

Number 57. (Capital stock, $200,000.) Shares, 5.

The District Title Insurance Company (District of Columbia).

This is to certify that W. Mosby Williams is entitled to five shares of twenty dollars each of the capital stock of this company, transferable only on the books of said company in person or by attorney on return of this certificate.

In witness whereof the president and secretary have hereunto affixed their signatures, in the city of Washington, D. C., this twenty-eighth day of June, A. D. 1892.

{ Corporate Seal, The District Title Insurance Company, Organized May 4, 1892, District of Columbia. }

EUGENE CARUSI, *Secretary.*
WM. F. MATTINGLY,
President pro Tem.

10,000 shares, $20 each.

29 For value received I hereby sell, transfer, and assign unto —— —— the shares of stock within mentioned, and authorize the necessary transfer on the books of the company.

—— ——.

Witness — this — day of ——, 189–.

—— ——.

A true copy.
Test: JOHN R. YOUNG, *Clerk.*

COMPLAINANT'S EXHIBIT No. 2.

Filed January 11, 1901.

Stockholders of the District Title Insurance Company who have agreed to exchange such stock at $4 per share for stock of the Realty, Appraisal and Agency Company (organized as the Columbia Agency and Trust Company), who have not yet deposited the same, will please deliver their stock to E. Southard Parker, treasurer, at the office of the company, 610 13th St. N. W., before Saturday, January 20, 1900, 1.00 p. m. Any holder of said stock may, by the terms of the agreement, exchange such stock. All holders having the privilege of subscribing for additional shares at par, not exceeding the number they are entitled to by exchange, must subscribe within the said time. The Realty, Appraisal and Agency Company
30 stock will be ready for delivery about Monday, January 22, 1900.

S. W. WOODARD, *President.*
W. J. NEWTON, *Secretary.*

A true copy.
Test: JOHN R. YOUNG, *Clerk.*

COMPLAINANT'S EXHIBIT No. 3.

Filed January 11, 1901.

Watson J. Newton, president; Nathaniel Carusi, vice-president; E. Southard Parker, treasurer; Charles G. Allen, secretary.

Directors: S. W. Woodard, E. Southard Parker, Wm. F. Mattingly, John B. Larner, James B. Wimer, George W. Brown, John A. Hamilton, Nathaniel Carusi, Walter H. Acker, E. Quincy Smith, Charles W. Handy, Walter Hieston, Frank Hume, Watson J. Newton.

The District Title Insurance Company, # 610 13th street N. W., Washington, D. C.

Telephone 1887.

WASHINGTON, D. C., *March 5th,* 1900.

Mr. W. Mosby Williams.

DEAR SIR: Enclosed please find statement of this company at the close of business on February 24th, 1900.

As you are aware, the management of the company has been entirely changed. New men and new methods have been introduced, and we ask your earnest co-operation in the matter of getting business.

31 The expenses of the company has been reduced nearly one-half, and with the present force and expense the company can handle twice as much business as it is receiving.

The dividend-paying companies in the city are those in which the stockholders take an active interest and use their influence to cause examinations to be made by the company in which they are so interested. Not only do they do this with their personal business, but even go so far as to use official position for the same purpose, to the detriment of this company. We, of course, do not ask this.

This company has set aside in a separate fund every dollar it has ever received for insurance for the protection of its policy-holders and has not used it to pay dividends, and will in future continue to deposit in said fund all premiums received, using only the interest as profit. Our assets will compare favorably with any other company of like capital, with this reinsurance reserve deducted.

Our facilities for doing business quickly and promptly are unequalled, and since the change of management there has been absolutely no failure to furnish a title when promised.

The paying of dividends and sending the stock back to par is merely a question for the stockholders to settle themselves, by their earnest support or otherwise. That the company has not had this support in the past is apparent from its books. All stockholders in the Realty Appraisal and Agency Company are practically stockholders in the District Title Insurance Company.

We should be glad to have you call and examine the present condition of your property and our methods of doing business,
32 and to receive suggestions. We want to get in close touch with those whose financial interest is the same as ours.

THE DISTRICT TITLE INSURANCE COMPANY,
By W. J. NEWTON, *President.*

A true copy.
Test: JOHN R. YOUNG, *Clerk.*

33 In the Supreme Court of the District of Columbia.

W. MOSBY WILLIAMS
vs.
THE DISTRICT TITLE INSURANCE COMPANY. } No. 21843. In Equity.

The President of the United States to the District Title Insurance Company, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal allowed in the supreme court of the District of Columbia on the 6th day of December, 1900, wherein W. Mosby Williams is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 8th day of December, in the year of our Lord one thousand nine hundred (1900).

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 10th day of December, 1900.

WM. F. MATTINGLY,
Attorney for Appellee.

34 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 33, inclusive, to be a true and correct transcript of the record, as prescribed by rule 5 of the Court of Appeals of the District of Columbia, in cause No. 21843, equity, wherein W. Mosby Williams is complainant and The District Title Insurance Company is defendant, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, this 9th day of February, A. D. 1901.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1050. W. Mosby Williams, appellant, *vs.* The District Title Insurance Co. Court of Appeals, District of Columbia. Filed Feb. 11, 1901. Robert Willett, clerk.